

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DARREN MOORE,

Plaintiff,

vs.

Case No.: 2-10-cv-11824

Honorable: Stephen J. Murphy, III

Magistrate Judge: Mona K. Majzoub

LIEUTENANT E. JONES, POLICE OFFICER
JANOSKEY, POLICE OFFICER COLON,
POLICE OFFICER S. SALISBURY, CITY OF
DETROIT POLICE DEPARTMENT and CITY
OF DETROIT,

Defendants.

DAVID B. TRIVAX (P-38798)
Serlin Trivax & Stearn, PLLC
Attorney for Plaintiff
31780 Telegraph Road, Suite 120
Bingham Farms, MI 48025
(248) 663-2666

MARION R. JENKINS (P-26257)
Assistant Corporation Counsel
Attorney for Defendant City of Detroit
660 Woodward Avenue
1650 First National Building
Detroit, MI 48226
(313) 237-3032

**ANSWER TO COMPLAINT ON BEHALF OF
DEFENDANT, CITY OF DETROIT**

NOW COMES Defendant, City of Detroit, a municipal corporation, by and through its undersigned attorneys and in answer to Plaintiff's Complaint, states as follows:

FIRST DEFENSE

The Defendant, City of Detroit, a municipal corporation, is protected from liability on the Plaintiff's state-law claims by governmental or official immunity. At all relevant times the City of Detroit was a governmental agency, and all conduct set forth in Plaintiff's Complaint arose out of activities expressly and/or impliedly mandated or authorized by Constitution, Statute and/or law

such that the same were and are governmental functions. The Detroit Police were engaged in the governmental function of law enforcement. MCLA 691.1407(2). Further, Defendant is not liable for the acts of its employees under the doctrine of Respondeat Superior.

SECOND DEFENSE

The Plaintiff has failed to state a claim against Defendants upon which relief can be granted.

THIRD DEFENSE

Any injury suffered by the Plaintiff was proximately caused by his own negligence and other wrongdoing, including serious wrongdoing that gives rise to the wrongful-conduct defense as well as the comparative negligence defense.

FOURTH DEFENSE

The arrest of the Plaintiff, if any, was supported by probable cause and/or a valid warrant.

FIFTH DEFENSE

To the extent, if any, that this Defendant or anyone acting at the direction of or in concert with this Defendant used force against the Plaintiff, each such person acted in self defense.

SIXTH DEFENSE

To the extent, if any, that this Defendant or anyone acting at the direction of or in concert with this Defendant used force against the Plaintiff, each such use of force was privileged and lawful because the force was reasonably applied in the execution of a lawful arrest or in the lawful performance of other police duties.

SEVENTH DEFENSE

This Defendant, City of Detroit, did not have or otherwise adopt any customs, policies and/or procedures which caused or otherwise were the moving force behind any constitutional violations alleged in Plaintiff's Complaint, nor did any such alleged customs, policies and/or procedures originate from a decision maker with final policy making authority. Further, this Defendant did not ratify, accept and/or otherwise condone any constitutional violations alleged in Plaintiff's Complaint. Finally, this Defendant did not act with deliberate indifference as to known or obvious consequences with respect to the activities alleged in Plaintiff's Complaint and/or as to any constitutional violations, nor is there any widespread practice of constitutional violations and/or failure to take corrective action regarding the same.

EIGHTH DEFENSE

The applicable Statutes of Limitation lapsed on some or all of Plaintiff's claims prior to filing of his Complaint.

NINTH DEFENSE

This Defendant admits the allegations contained in paragraph 6 of Plaintiff's Complaint. This Defendant denies the allegations contained in paragraphs 7, 12, 19, 25, 26, 32, 38, 41, 43, 54, and 55 of Plaintiff's Complaint for the reason that the same are inaccurate and/or untrue. Defendant neither admits nor denies the rest and remainder of the allegations contained in Plaintiff's Complaint, and leave Plaintiff to his proofs.

RESERVATION OF ADDITIONAL DEFENSES

This Defendant reserve the right to plead such additional defenses as may become known

through research, investigation, discovery or otherwise.

WHEREFORE, Defendant, City of Detroit, a municipal corporation, respectfully demands dismissal of the Plaintiff's claims or judgment of no cause of action on those claims, together with attorney fees and costs so wrongfully incurred.

Respectfully submitted,

/s/ Marion R. Jenkins

Assistant Corporation Counsel
Attorney for Defendant City of Detroit
660 Woodward Avenue
1650 First National Building
Detroit, MI 48226
(313) 237-3032
JenkMR@detroitmi.gov
(P-26257)

Dated: May 6, 2010

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2010, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

David B. Trivax
Serlin Trivax & Stearn, PLLC
31780 Telegraph Road, Suite 120
Bingham Farms, MI 48025

and hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants(s):

None.

/s/ Marion R. Jenkins

Assistant Corporation Counsel
Attorney for Defendant City of Detroit
660 Woodward Avenue

1650 First National Building
Detroit, MI 48226
(313) 237-3032
JenkMR@detroitmi.gov
(P-26257)